SINGAPORE REPORTS

CHEW SIN LENG CONSTRUCTION CO. v. COSY HOUSING DEVELOPMENT PTE. LTD.

[C.A. (Sinnathuray, Chua & Rajah JJ.)
November 6, 1987]
[Singapore — Civil Appeal No. 15 of 1986]

Contract — Building contract — Claim for payment under certificate of final payment — Order 14 application — Merits of application.

Evidence — Leave to adduce in evidence affidavits before Court of Appeal.

On May 11, 1983, the plaintiffs and the defendants entered into a contract whereby the plaintiffs agreed to carry out and complete the construction of 20 units of condominium housing for a sum of $1,550,000, on and subject to the terms therein contained and to the conditions annexed thereto.

Pursuant to the contract, the defendants sought the payment to them of a certain sum of money which was supposed to be paid under an architect's certificate of final payment. In furtherance of their claim, the plaintiffs took out an Order 14 summons for final judgment.

The learned Deputy Registrar dismissed the defendants' application for a stay. The defendants appealed against the Registrar's decision. Thean J., who heard the appeal, set aside the order of the learned Deputy Registrar and stayed all proceedings pending arbitration. The plaintiffs appealed to the Court of Appeal. In the process of the appeal, two affidavits were allowed to be admitted on behalf of the plaintiffs.

The points for decision in the present appeal were: (1) whether in the circumstances of the instant case, the certificate of final payment was a final certificate within the meaning of clause 30(6); and (2) whether even if the said certificate of final payment was found to be a final certificate under clause 30(6), it was not conclusive at least in one aspect, there being defects falling within exception (b) to clause 30(7).

Held, allowing the appeal. (1) on the first point the court was of the view that had these affidavits, particularly that of the architect, been before the learned appeal judge, he would not have set aside the learned Deputy Registrar's order;

(2) on the second point the court accepted the submission that the defects relied on were those which the purchasers of the units had raised with the developer and these were not the defects contemplated by this provision. One must look at the contract between the developer and the contractor and not at any contract between the developer and the purchasers of the units.

COURT OF APPEAL.

M. Karthigesu (*M. Rubin* with him) for the appellants.

Kan Ting Chiu for the respondents.

Cur. Adv. Vult.

Rajah J. (delivering the grounds of decision): The plaintiffs (appellants) are a company incorporated in Singapore and they carry on the business of building contractors. The defendants (respondents) are also a Singapore company and they are housing developers.

On May 11, 1983, the plaintiffs and the defendants entered into a contract (the contract) whereby the plaintiffs agreed to carry out and complete the construction of 20 units of condominium housing at a reserve road off Jalan Haji Salam, Singapore for a sum of $1,550,000, on and subject to the terms therein contained and to the conditions annexed thereto (the conditions). The architects for the project are A.D. Consortium ("the architect") and Construction Cost Surveyors are the quantity surveyors ("the quantity surveyor").

Pursuant to the contract, the architects issued two certificates of payment, the first being No. 11 dated January 10, 1985 for $50,000 and the other purporting to be a certificate of final payment for $277,041.05 dated July 1985. In January and April 1985, the defendants paid the plaintiffs the total sum of $40,000 towards certificate No. 11 but made no payment in respect of the other certificate. It was in these circumstances that the plaintiffs commenced legal proceedings against the defendants for the sum of $227,041.05 being the balance of the monies claimed to be due from the defendants to the plaintiffs under the said two certificates.

In furtherance of their claim, the plaintiffs took out an Order 14 summons for final judgment. The defendants on their part took out an application for stay, claiming that there were many issues in dispute, the main ones being:

(i) a claim for liquidated damages for delay and and the proper computation of the period of extension caused by exceptionally inclement weather;

(ii) who should bear the fees of the mechanical and electrical engineers appointed;

(iii) the price and extent of additional work carried out by the plaintiffs;

(iv) the price of work that the plaintiffs have failed to carry out;

(v) deduction for poor quality material and bad workmanship supplied by the plaintiffs.

They therefore claimed that there was a genuine outstanding dispute between the plaintiffs and the defendants which should be resolved through arbitration, as provided for in the contract, and applied to have all proceedings stayed pending arbitration.

It will be convenient here to set out clauses 30(6) and 30(7) of the conditions which read:

"30(6) So soon as is practicable but before the expiration of 3 months from the end of the Defects Liability Period stated in the appendix to these Conditions or from completion of making good defects under clause 15 of these Conditions or from receipt by the Architect of the documents referred to in paragraph (b) of sub-clause (5) of this Condition, whichever is the latest, the Architect shall issue the Final Certificate. The Final Certificate shall state:

(a) The sum of the amount paid to the Contractor under Interim Certificates and the amount named in the said appendix as Limit of Retention Fund and

(b) The Contract Sum adjusted as necessary in accordance with the terms of these Conditions

and the difference (if any) between the two sums shall be expressed in the said certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be. Subject to any deductions authorised by these Conditions, the said balance as from the fourteenth day after presentation of the Final Certificate by the Contractor or as the case may be as from the fourteenth day after issue of the Final Certificate shall be a debt payable by the Contractor to the Employer.

30(7) Unless a written request to concur in the appointment of an arbitrator shall have been given under clause 34 of these Conditions by either party before the Final Certificate has been issued or by the Contractor within 14 days after such issue, the said certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether by arbitration under clause 34 of these Conditions or otherwise) that the Works have been properly carried out and completed in accordance with the terms of this Contract and that any necessary effect has been given to all the terms of this Contract which require an adjustment to be made to the Contract Sum, except and in so far as any sum mentioned in the said certificate is erroneous by reason of:

(a) Fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt with in the said certificate;

(b) Any defect (including any omission) in the Works, or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed; or

(c) Any accidental inclusion or exclusion of any work, materials, goods or figure in any computation, or any arithmetical error in any computation."

The learned Deputy Registrar dismissed the defendants' application for a stay. The defendants appealed against the Registrar's refusal for a stay and it was this appeal that was heard by Thean J. when he set aside the learned Deputy Registrar's order and stayed all proceedings pending arbitration. In this judgment, the learned appeal judge said:

"Mr. Kan challenged that the second certificate is in truth a final certificate within the meaning of clause 30(6) of the conditions. This point as raised by Mr. Kan is not without substance. A certificate to be a final certificate under clause 30(6) of the conditions must state the sum already paid to the plaintiffs, the adjusted contract sum and the difference between the said two sums to be paid by the defendants to the plaintiffs, or by the plaintiffs to the defendants, as the case may be. The second certificate issued by the architects falls far short of such requirement and in my view is not a final certificate under clause 30(6) of the conditions, and therefore clause 30(7) has no application."

The plaintiffs appealed against the judgment of Thean J. and the appeal was heard by us. We allowed the appeal and restored the Deputy Registrar's order. Ground 4(d) of the plaintiffs' petition of appeal reads:

"(d) in holding that the second certificate dated the 18th July 1985 and entitled 'certificate of final payment' did not comply with the requirements of clause 30(6) of the Contract and therefore was not a final certificate within the meaning of clause 30(6) of the contract without giving the contractor's counsel an opportunity to explain as this point was taken for the first time by the developer's counsel during the arguments before the judge. The document exhibited in the affidavits had not enclosed the attachment to the 'certificate of final payment'."

Arising from this, the petition of appeal prayed for leave of the Court of Appeal for the plaintiffs to adduce in evidence affidavits of their solicitor, Mr. Chew Teck Lim, and of Mr. David Chang Kah Kiat, the project architect, bespeaking what in fact and in truth the architect had submitted to the developer. Before the hearing of the appeal, the plaintiffs (appellants) obtained leave of the Court of Appeal to adduce in evidence the said affidavits.

The relevant parts of the project architect's affidavit dated June 17, 1986 read as follows:

"2) On or about the 26th March 1986, my firm received a letter dated 26th March 1986 from Messrs Shyam & Chew, the solicitors for the plaintiffs in this action. In that letter, Messrs Shyam & Chew sought clarification from us on the certificate of final payment dated 18th July 1985 issued by my firm and the statement of final account. A copy of the said letter is now produced, shown to me and marked 'DC-1'.

3) I then replied on 26th March 1986 itself to Messrs Shyam & Chew, stating that when we forwarded the certifi-

cate of final payment to the owners (*i.e.* the defendants herein), the statement of final account was not attached thereto due to an oversight on our part but immediately after the discovery of that oversight, we sent the statement of final account the next day *i.e.* on 19th July 1985 to the defendants with the intent that both the documents *viz.* the certificate of final payment and the statement of final account are to be read as one document. A copy of my said letter dated 26th March 1986 (together with the enclosures) addressed to Messrs Shyam & Chew is now produced, shown to me and marked 'DC-2' ".

The points for decision in the appeal, in our view, were (1) whether in the circumstances of the instant case the certificate of final payment dated July 1, 1985 was a final certificate within the meaning of clause 30(6), and (2) whether even if the said certificate of final payment is found to be a final certificate under clause 30(6), it is not conclusive at least in one aspect, there being defects falling within exception (b) to clause 30(7).

On the first point, we accepted the evidence as emerged from the two admitted affidavits. We were of the view that had these affidavits, particularly that of the architect, been before the learned appeal judge he would not have set aside the learned Deputy Registrar's order. On the second point, we accepted the submission of the appellants' counsel that the defects relied on are those which the purchasers of the units have raised with the developer and these are not the defects contemplated by this provision. One must look at the contract between the developer and the contractor and not at any contract between the developer and the purchasers of the units. We accordingly allowed the appeal.

Appeal allowed.

Solicitors. *Amarjit Rubin & Partners; R.C.H. Lim & Co.*

CHIEF ASSESSOR AND THE COMPTROLLER OF PROPERTY TAX, SINGAPORE v. HOWE YOON CHONG

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.) November 18, 1987]

[Singapore – Civil Appeal No. 76 of 1984]

Revenue Law – Property tax – Annual value – Renovation – Increase in annual value – Administrative practice – Property Tax Act (Cap. 144), ss. 2, 17(4), 18(7), 19(3) & 20.

Constitutional Law – Equal protection – Constitution of Singapore, art. 12(1).

This is an appeal against the decision of the High Court ([1985] 1 M.L.J. 182 at 191) allowing the appeal against the decision of the Valuation Review Board (see [1985] 1 M.L.J. 183-191). The respondent is the owner of a two-storey detached residential house (built in 1966) No. 9 Binjai Walk, erected on a site containing an area of 18,902 sq. ft. ("the property"). At all material times, he was and still is in occupation of the property, which was first assessed at an annual value of $2,400. As it was owner-occupied, the respondent paid property tax at a concessionary rate of 23% of the annual value amounting to $552 per annum. Following a general assessment of annual value of properties in the Binjai Park area, the annual value of the property was increased from $2,400 to $8,400 as from February 9, 1970. In 1975, substantial alterations and additions were made to the house which were completed in December 1975 at a cost of $48,000 resulting in an increase of the net floor area of the house from 3,547 sq.ft. to 5,554 sq.ft. and an increase in the number of bedrooms from two to five. The Chief Assessor, upon notification, proceeded to amend the Valuation List 1976 by increasing the annual value of the property to $28,800 with effect from January 1, 1976 and notified the respondent accordingly. The Comptroller refused to amend their proposals. The respondent appealed to the Valuation Review Board. The Board dismissed his appeal, upon which he appealed to the High Court. The High Court allowed his appeal.

The High Court concluded that the administrative practice of the Chief Assessor was inconsistent with the provisions of Article 12(1) of the Constitution. The learned judge, applying the principle of uniformity, held that the annual value of the property for the year 1976 should be $16,240.00. The appellants now appeal against that decision. The sole issue before the Court of Appeal is whether the assessment of annual value was made in contravention of Article 12(1) of the Constitution.

Held, allowing the appeal with costs: the action taken by the Chief Assessor in (i) proceeding under section 18(7) of the Property Tax Act to amend the Valuation List as regards the property; (ii) revising the annual value of the property to $28,800 in accordance with section 2 of the Act, thus updating the annual value of the property; and (iii) not revising the annual values of the other properties in the Binjai Park area in which there had been no change of circumstances of the kind laid down in section 18 had not in anyway resulted in a situation which is "inconsistent with the equal protection clause of the Constitution."